

Order

Michigan Supreme Court
Lansing, Michigan

November 10, 2005

Clifford W. Taylor,
Chief Justice

ADM File No. 2004-53

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Amendment of
Rule 9.124 of the
Michigan Court Rules

AMENDMENT TO ORDER

The order of November 8, 2005, is amended to correct a clerical error by which the order purported to propose for comment an amendment of MCR 9.124. The Court is in fact adopting that amendment, and the order is therefore corrected. The order now reads as follows:

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 9.124 of the Michigan Court Rules is adopted, effective January 1, 2006.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 9.124 Procedure for Reinstatement

(A) [Unchanged.]

(B) Petitioner's Responsibilities.

- (1) Separately from the petition for reinstatement, the petitioner must serve only upon the administrator a personal history affidavit. The affidavit is to become part of the administrator's investigative file and may not be disclosed to the public except under the provisions of MCR 9.126. The ~~affidavit must contain the~~ following information must be attached to or contained in the affidavit:

(a) [Unchanged.]

(b) employment history since the time of disqualification, including the nature of employment, the name and address of every employer, the duration of such employment, and the name of the petitioner's immediate supervisor at each place of employment; if requested by the grievance administrator, the petitioner must provide authorization to obtain a copy of the petitioner's personnel file from the employer;

(c)-(e) [Unchanged.]

(f) copies of the petitioner's personal and business federal, state, and local tax returns from the date of disqualification until the filing of the petition for reinstatement, and if the petitioner owes outstanding income taxes, interest, and penalties, the petitioner must provide a current statement from the taxation authority of the current amount due; if requested by the grievance administrator, the petitioner must provide a waiver granting the grievance administrator authority to obtain information from the tax authority;

~~(f)-(j)~~ [Paragraphs (f)-(j) are relettered (g)-(k) but otherwise unchanged.]

~~(k)(l)~~ whether there are any outstanding judgments against the petitioner—the petitioner was a party to any civil case, including the title, docket number, and court in which such case was filed; the petitioner must provide copies of the complaints and any dispositional orders or judgments, including settlement agreements, in such cases;

~~(l)(m)~~ whether the petitioner was a defendant or a witness in any criminal case, and the title, docket number, and court in which such case was filed~~occurred~~; the petitioner must provide copies of the indictments or complaints and any dispositional orders or judgments of conviction in cases in which the petitioner was a defendant;

(n) whether the petitioner was subject to treatment or counseling for mental or emotional impairments, or for substance abuse or gambling addictions since the time of disqualification; if so, the petitioner must provide a current statement from the petitioner's service provider setting forth an evaluative

conclusion regarding the petitioner's impairment(s), the petitioner's treatment records, and prognosis for recovery.

(2)-(5)[Unchanged.]

- (C) Administrator's Responsibilities. Within 14 days after the commission receives its copy of the petition for reinstatement, the administrator shall submit to the Michigan Bar Journal for publication a notice briefly describing the nature and date of the discipline, the misconduct for which the petitioner was disciplined, and the matters required to be proved for reinstatement. The administrator shall investigate the petitioner's eligibility for reinstatement before a hearing on it, report the findings in writing to the board and the hearing panel within 56 days of the date the board assigns the petition to the hearing panel, and serve a copy on the petitioner. For good cause, the hearing panel may allow the administrator to file the report at a later date, but in no event later than 7 days before the hearing. The report must summarize the facts of all previous misconduct and the available evidence bearing on the petitioner's eligibility for reinstatement. The report is ~~not a pleading and part of the record but~~ does not serve to restrict the administrator parties in the presentation of relevant evidence at the hearing. Any evidence omitted from the report or received by the administrator subsequent to the filing of the report must be disclosed promptly to the hearing panel and the petitioner.

(D)-(E) [Unchanged.]

Staff Comment: The amendment of MCR 9.124(B)(1) expands the information a petitioner for reinstatement is required to include in or attach to the petitioner's personal history affidavit. The amendment of subrule (b) adds a requirement that the petitioner, at the grievance administrator's request, provide authorization for the grievance administrator to obtain a copy of the petitioner's personnel file regarding any employment held since the time of disqualification. The amendment of subrule (f) requires a petitioner to attach copies of petitioner's tax returns from the date of disqualification to the date of the petition for reinstatement. The amendment of subrule (l) adds a requirement that a petitioner provide copies of any civil complaints and judgments or dispositional orders with respect to any resolution of a civil complaint involving the petitioner. According to the amendment of subrule (m), a petitioner is required to provide copies of criminal complaints and dispositional orders or judgments of conviction for any criminal case in which the petitioner was a defendant. Subrule (n) requires a petitioner to state on his or her personal history affidavit whether, since the date of disqualification, the petitioner received treatment for mental or emotional impairments or substance abuse or gambling addictions. The amendment of MCR 9.124(C) simply codifies what already occurs in hearings on petitions for reinstatement and appeals from decisions following those hearings.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 10, 2005

Corbin R. Davis

Clerk